(1)

Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

Lucille Prol, PETITIONER

vs.

Howard K. Prol, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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4 copies

QUESTIONS PRESENTED FOR REVIEW

1. For debts accrued while a statute, which defines a special protection to a class of individuals, is in effect, can the statute dictate to a state court that the protection be incorporated into the state court's decision, even after the statutory provision has been repealed?

2. If the statute is as in Question 1, above, can the statute dictate to the state court that the protection *must* be incorporated into the state court's decision?

PARTIES TO THE ACTION IN QUESTION

Howard K. Prol, Plaintiff, Appellee
Lucille Prol, Defendant, Appellant

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REPORTS OF OPINIONS AND ORDERS

It is believed that none of the Opinions or Orders in this case have been reported.

BASIS FOR JURISDICTION

Statutory basis: 28 U.S.C. § 1257(a)
The Supreme Court of Pennsylvania issued its Order denying the Petition for Allowance of Appeal on December 26, 2002. On 2/20/2003, his Court granted an extension of the time in which to file the Petition for Writ of Certiorari to 5/25/2003.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. CONST. Art. 6 Cl. 2:

> This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. CONST. Amend. V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in

land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. XIV § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PA. CONST. Art. 1 § 11.

Courts to be open; suits against the Commonwealth.

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

PA. CONST. Art. 5 § 9.

Right of appeal

There shall be a right of appeal in all cases to a court of record from a court not of record; and there

shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

26 U.S.C. § 6013(e):

(e) Spouse relieved of liability in certain cases.--

(1) In general.--Under regulations prescribed by the Secretary, if--

(A) a joint return has been made under this section for a taxable year,

(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

(2) Grossly erroneous items.--For purposes of this subsection, the term 'grossly erroneous items' means, with respect to any spouse--

(A) any item of gross income attributable to such spouse which is omitted from gross income, and

(B) any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact

or law.

(3) Substantial understatement.--For purposes of this subsection, the term 'substantial understatement' means any understatement (as defined in section 6662(d)(2)(A)) which exceeds $500.

(4) Understatement must exceed specified percentage of spouse's income.--

(A) **Adjusted gross income of $20,000 or less.**--If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this subsection shall apply only if the liability described in paragraph (1) is greater than 10 percent of such adjusted gross income.

(B) **Adjusted gross income of more than $20,000.**--If the spouse's adjusted gross income for the preadjustment year is more than $20,000, subparagraph (A) shall be applied by substituting '25 percent' for '10 percent'.

(C) **Preadjustment year.**--For purposes of this paragraph, the term 'preadjustment year' means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) **Computation of spouse's adjusted gross income.**--If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

(E) **Exception for omissions from gross income.**--This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Special rule for community property income.--For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income

from property) are attributable shall be made without regard to community property laws.

RELEVANT FACTS OF THE CASE

The parties were married on October 5, 1968. On or about May 21, 1998, the Plaintiff filed a Complaint in divorce, requesting a "no fault" divorce and equitable distribution. The Defendant filed an answer, asserting claims for alimony *pendente lite*, costs, expenses and medical insurance.

The claims were initially heard by a Special Master in the Chester County court house, in December of 2000. After the hearing, the Master filed a Report and Recommendation. The Report and Recommendation addressed a number of issues. Despite testimony concerning the Defendant's status as an innocent spouse and the Defendant's assertion that the debt be treated as separate property, which testimony established its applicability, the master's decision treated an IRS debt accrued by the Plaintiff from 1985 through 1990 as a marital debt, and did not make a credit to the Defendant as an innocent spouse under 26 U.S.C. § 6013(e).

The Defendant filed timely exceptions, in which the Defendant sought to have the debt addressed, on the basis of the Defendant's status as an innocent spouse, as the Plaintiff's separate debt. In the Court of Common Pleas of Chester County, Pennsylvania, the Honorable James P. MacElree, II, ruled on the exceptions, and adopted the Master's calculations while dismissing nearly all of the Defendant's exceptions. On the issue of the IRS debt, the Trial Court based its decision solely on the fact that the parties filed joint returns, and did not consider the applicability of 26 U.S.C. § 6013(e). (9/18/01 Opinion, p. 12) The Defendant timely appealed to the Superior Court of Pennsylvania, which appeal included

the innocent spouse issue.

The Superior Court issued its memorandum Opinion and Order, affirming the Court of Common Pleas, on May 2, 2002.

The Defendant timely petitioned the Supreme Court of Pennsylvania for allowance of appeal of the Superior Court decision. The petition included the innocent spouse issue. The Supreme Court of Pennsylvania declined to hear the Defendant's appeal, on or about December 26, 2003.

Within the ninety day period after the decision of the Supreme Court of Pennsylvania, the Defendant requested an extension of time, in which to petition for a writ of certiorari, from the Supreme Court of the United States.

ARGUMENT

The Debt

The debt accrued by the husband exceeded $300,000.00. The debt resulted from the Plaintiff's failing to pay taxes from 1985 through 1990, while the Defendant relied upon his assertion that the taxes were being paid.

In the Master's hearing and before the Trial Court, the finders of fact declined to attribute the debt as a separate debt, but instead attributed it as a marital debt, reducing the value of both of the parties' shares of the marital estate.

The marital estate, itself, totaled $511,809. The Defendant's share of the estate totaled $294,413. If the 58% share of the IRS debt is removed from the Defendant's total share, her share of the estate would be $468,413, a substantial increase.

Federal Laws Applicable

Both the federal and state constitutions require that

the Master and Trial Court act within the bounds of due process. In the Constitution of the Commonwealth of Pennsylvania, it is referred to as "due course of law", but it is essentially the same issue. U.S. CONST. Amends. V and XIV § 1; PA. CONST. Art. 1 § 11.

In this situation, there is a federal law which applies. In 26 U.S.C. § 6013(e), Congress provided protection to innocent spouses from "liability for tax (including interest, penalties, and other amounts) for such taxable year..."

The innocent spouse provisions were in the Internal Revenue Code since the 1970's, long before the debt was accrued. The provisions were in effect for the years of 1985 through 1990, when the debt was accrued.

The protections provided in the statute are privileges of citizens of the United States, and are the "supreme Law of the Land" on the issue. U.S. CONST. Art. 6, Cl. 2; U.S. CONST. Amend. XIV § 1.

Due process requires that the statutory protections be given effect.

Application of the Federal Laws

The innocent spouse provisions were enacted to address the inequity of holding one spouse liable for the illegitimate acts of the other, when the innocent spouse was not in a position to know of the deficiency, and not capable of protecting against the harm resulting from the other spouse's misconduct. *Friedman v. C.I.R.*, 53 F.3d 523 (C.A.2, 1995); *Shea v. C.I.R.*, 780 F.2d 561 (C.A.6, 1986).

Whether one addresses the "liability for tax" terms or the "including ... other amounts" parenthetical terms, it is clear that the statute prohibits holding an innocent spouse, as defined in the statute, liable for the delinquency. Charging the Defendant for the tax is a means of holding her liable for the tax; the attribution of the tax as a reduction to the Defendant's

share of the marital estate is a liability for tax. The protection extended by Congress, through I.R.C. § 6013(e)(1), relieves the Defendant of *all* liability for the tax, which includes the attribution of a portion of the tax as a charge against the Defendant's share of the marital estate.

The Defendant has testified that she is an innocent spouse, as the term is defined. The Trial Court did not consider the issue, so on review, the direction sought from this Court is that the Trial Court apply the statute and decide the issue under the appropriate law. While it is the Defendant's position that she qualifies as an innocent spouse, it is still a matter for the finder of fact to establish whether the facts applicable to the statute have been proven.

The terms of the statute were in effect for all of the years of delinquency. They are federal law, which is enforceable through the Supremacy and Due Process clauses of the Constitutions of the United States and the Commonwealth of Pennsylvania.

Because the language of the statute is mandatory ("shall"), it can and must be enforced by the state Court, and the terms of the statute, if the Defendant is found to qualify for the protection, dictate that the Trial Court address the character of the debt as separate and refrain from imposing liability on the Defendant for the tax.

National Significance

There are two contexts wherein this Petition raises matters of national significance. The first is within this, particular statute. The second is within the scope of all federal law.

In this particular statute, there is a special protection, which was in place for decades. People should be allowed to rely upon, and secure the benefits of, protections enacted at the time of the events wherein the protections are being

relied-upon. There are plenty of marriages in which claims from the pre-repeal period will be relevant, and the statute dictates that protections be upheld. People relied upon these terms. The appeal addresses issues of the supremacy of federal law, the requirements of due process and the legitimacy of the enactments of Congress. If the protection required by the statute is not to be upheld, then how can anyone reasonably rely upon the protections in the law right now, since they could be repealed at any time?

In the matter of federal law, this appeal addresses the question of retroactivity of repeals and the ability of federal law dictating a protection to determine the character of an event, as provided-for in the Supremacy Clause.

The supremacy issue is the clearest. When there is an applicable federal law, it must be applied. Review of this appeal would address and overcome conflicts by the state governments, including the state judiciaries, with the contradictory terms within the laws enacted by Congress.

The retroactivity of repeals is somewhat more difficult, but is as important. When a law is repealed, but a claim arises which addresses a period when the protection in the repealed statute is first invoked, does the repeal require that the terms no longer be enforced for acts taking place in a period when the terms were still in force? If the repeal retroactively removes the protection, then such a conclusion is a matter of broad, national significance, and it could affect the constitutional interpretation of a number of state laws and constitutions.

The issues raise in this appeal are clearly significant enough to warrant review by this Court.

CONCLUSION

The state courts have decided the issue of the attribution of the IRS debt in a manner which conflicts with federal statutory and constitutional law. The issues have been properly preserved for review. They are material issues within this case, and they are issues of national significance. The applicability of the federal law is clear, and there are no ambiguities which would hamper this Court's addressing the issues.

This Court should grant Certiorari and allow this appeal to be heard.

Respectfully submitted,

Lucille Prol

Appendix A: Superior Court of Pennsylvania Decision
Begins, P. 13
Appendix B: Court of Common Pleas of Chester County, Pennsylvania, Decision
Begins, P. 17
Appendix C: Supreme Court of Pennsylvania Decision, denying review
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Appendix D: Excerpts from Decision of Special Master
Begins, P. 41

HOWARD K. PROL	:	IN THE SUPERIOR COURT OF
Appellee	:	PENNSYLVANIA
v.	:	
LUCILLE PROL	:	
Appellant	:	No. 2809 EDA 2001

Appeal from the ORDER Entered September 18, 2001 in the Court of Common Pleas of CHESTER County, DOMESTIC RELATIONS at No. 98-04293

BEFORE: McEWEN, P.J.E., STEVENS, and OLSZEWSKI, JJ

MEMORANDUM: **FILED MAY 02, 2002**

Lucille Prol ("wife") appeals the Order entered September 18, 2001, concerning the parties' divorce and ancillary matters. We affirm.

Wife and Howard Prol ("husband") were married on October 5, 1968. Trial Court Opinion, 9/18/01, at 1. During the marriage, they had two children, who have reached majority and are not at issue here. ***Id.*** On October 15, 1999, Husband filed a petition for counsel fees. ***Id.***

The parties are unable to agree on the date of separation. Husband asserts that they began to live apart in October 1996, while wife claims separation occurred in June 1998. ***Id***, at 1-2. [1]

On December 7 and 8, 2000, testimony was taken with respect to the parties' divorce and economic issues. ***Id.*** Wife filed exceptions to the Master's report. ***Id.***

On September 18, 2001, the lower court entered a final decree, disposing of wife's exceptions. This decree finalized the divorce, awarded wife fifty-eight percent of the marital assets and husband forty-two percent. ***Id***, at 27. The decree makes each party responsible for half of the $1,584 marital debt. ***Id.*** Wife is to receive alimony, in the sum of $1,300 per month, until husband reaches age 62, at which time he may petition to have the amount reviewed and modified. ***Id.*** He is obligated to pay wife alimony until he reaches age 65. ***Id.*** Wife is ordered to pay husband counsel fees in the amount of $1,000. ***Id.***

This appeal followed. Wife raises the following issues,

which we have renumbered for discussion.

1. Whether the lower court abused its discretion in entering a divorce under § 3301(d) when the husband's affidavit contained an incorrect separation date.

2. Whether the lower court abused its discretion in regard to the equitable distribution of the marital property.

3. Whether the lower court abused its discretion in th[e] manner in which it awarded alimony to wife.

4. Whether the lower court abused its discretion in requiring wife to pay counsel fees to husband.

Appellant's Brief at I-ii. [2]

First wife challenges the entry of the divorce. She contends that the lower court erred because husband's affidavit lists the date of separation as 1996, when she believes the parties separated in 1998. Because the dates are irrelevant in this case, we disagree.

In reviewing allegations concerning the validity of the entry of a divorce decree, we review the record de novo to decide if a legal cause of action in divorce exists. ***Verholek v. Verholek***, 741 A.2d 792, 795 (Pa. Super. 1999). Section 3301(d) of the Divorce Code permits a court to grant a divorce where a complaint alleges "that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a period of ***at least two years***...." 23 Pa.C.S.A. § 3301 (d)(1) (emphasis added).

Although the actual separation date is in dispute, the Master applied a May-June, 19978, date. N.T. Hearing, 12/7/00, at 22. Even accepting wife's later date, June 1998, the parties still lived separate and apart for two years prior to the hearing. For purposes of the statute, it is of no consequence that husband believes the parties to be separated for four years, while wife insists on only two. A divorce under § 3301(d) requires at least two years, and here, such time period exists.

Wife further disputes the trial court's assignment of marital debt, determination of the certificates of deposit as marital property, award of [3] alimony and award of counsel fees. Appellant's brief at I-ii. We will address these arguments in turn.

"Our scope of review in equitable distribution matters is

limited. Awards of alimony, counsel fees, and property distribution are within the sound discretion of the trial court and will not be disturbed absent an error of law or abuse of discretion." ***Keller v. Keller***, 760 A.2d 22, 74 (Pa. Super. 2000) (citations omitted).

Wife disputes the finding of the marital debt. She asserts that the loan against the 401(k) was an educational loan for husband, and therefore, his sole debt. Husband agrees this was an educational loan, but for one of the parties' children. Master's Report, 3/7/01, at 7. Wife insists that this loan was to finance husband's education. Yet, wife overlooks that this loan was taken in 1998, while husband completed his last degree in 1988. Clearly, allocating this as marital debt was neither an error of law nor an abuse of discretion.

Next, wife objects to the finding that the certificates of deposit were marital property. Wife claims that because she was forced to cash in these certificates to pay household expenses, they should not be considered marital property. We find this proposition untenable and completely at odds with the concept of marital property.

Marital property is all property acquired by either party during the marriage. 23 Pa.C.S.A. § 3501(a). Wife purchased all of these certificates, [4] with her income, during the marriage. Wife closed all five accounts at various times in 1999, after the separation. Although wife argues that these certificates fall under an exception to marital property, this exception requires the property to be disposed of *prior* to the date of final separation. ***See*** Appellant's Brief at 15; Pa.C.S.A. § 3501(a)(5). The certificates remained in wife's possession until after separation, when she "disposed" of them by redeeming them. It does not matter what she did with the money. It is marital property and must be treated as such.

Wife also challenges the award of alimony. We agree with the trial court that

> Currently, [h]usband has a greater earning capacity than [w]ife, however, this will not be the case when [h]usband retires. The alimony award as recommended permits [h]usband to have the alimony obligation reviewed when he

> is 62 years old. This is necessary because [h]usband's current employment is connected with his employer's contracts with various municipalities and governments that could result in his termination at the conclusion of these contracts. Although modifiable, [h]usband will have an alimony obligation to [w]ife until he is 65 years old, retirement age, at which time the income disparity between the parties will be lessened.

Trial Court Opinion, 9/18/01, at 24. Upon full review of the record, we find no error of law or abuse of discretion in the alimony award. ***See*** 23 Pa.C.S.A. § 3102(a)(6).

Finally, wife disputes the award of counsel fees. If a party shows actual need, an award of counsel fees is appropriate to put the parties on par in maintaining or defending an action for divorce. ***Verholek***, 741 A.2d at [5] 799. Moreover, a party may be awarded counsel fees when the other party engages in dilatory, obdurate, or vexatious conduct during the pendency of a matter. ***Id.*** (citation omitted).

Review of the record shows that wife had no respect for the proceedings. Wife refused to participate in the discovery process. Trial Court Opinion, 9/18/01, at 12. At the hearing, she had no interest in answering any specific questions, but instead expounded at length about the issues she wanted to discuss. ***Id.*** The Master had to direct her to answer only the question posed multiple times. ***Id.*** Wife's conduct certainly can be described as dilatory, obdurate, or vexatious, and this conduct certainly increased husband's attorney fees. To award husband a modest amount of attorney's fees due to her behavior is not an abuse of discretion.

Order affirmed.

Judgment Entered.

/S/

Prothonotary

Date: MAY 02 2002

HOWARD K. PROL	:	COURT OF COMMON PLEAS
Plaintiff		CHESTER COUNTY, PENNSYLVANIA
v.	:	IN DIVORCE
LUCILLE PROL	:	
Defendant	:	NO. 98-04293

Jane P. Marks, Esq., counsel for Plaintiff
May A. Jones, Esq., counsel for Defendant

MEMORANDUM OPINION AND FINAL DECREE

This matter is before the court on Defendant Lucille Prol's Exceptions to the Master's findings and recommendations concerning the parties' divorce action and ancillary matters.

I. BACKGROUND

A. Factual and Procedural History

Plaintiff Howard Prol and Defendant Lucille Prol were married on October 5, 1968. During their marriage, they had two children: Howard Kenneth Prol, Jr., age 30, and Deborah Lucille Prol, age 27. This was the first marriage for both of the parties. On May 21, 1998 Husband filed a Complaint in Divorce with an ancillary claim for equitable distribution. On March 30, 1999 Wife filed an answer and a counterclaim seeking alimony, alimony pendente lite, costs and expenses including medical insurance. On October 15, 1999 Husband filed a petition for counsel fees. The parties are not able to agree on the date of separation. Husband testified they began to live [1] separate and apart during October 1996, while Wife testified separation occurred during June 1998.

At the request of Husband, a Master was appointed to report on the parties' divorce and economic issues, The hearing was held on December 7, 2000 and December 8, 2000. On March 7, 2001, the Master filed a Report and recommendation based on the record and the hearing before her. Wife filed timely exceptions to the Master's Report.

B. Post-separation support and custody

Beginning in October 1996 the parties were living in separate bedrooms in the marital home. During May 1998 Wife filed a claim for support (May 15, 1998) and Husband moved out of the residence (date not of record). On September 2, 1998 the Court entered an Interim Order for support in the amount of

$2,207.48 per month. Two months later on November 5, 1998, the Court entered an Order for support based on a stipulation of the parties, in the amount of $2,500 per month. On November 28, 2000, after a hearing the Court entered an Order for support effective January 1, 2000, in the amount of $16.00 per month.

C. Master's Recommendation

The Master issued her report, after considering the testimony of the parties and the other evidence presented. The Master recommended a division of the marital property, which awarded 58% of the marital property to Wife and 42% of the marital property to Husband. She recommended that the parties split the marital debt ($1,584) [2] equally, that Husband be responsible for payment, and that Wife's 50% share of the debt should be deducted from her equitable distribution award.

II. EXCEPTIONS

On March 13, 2001, Wife filed timely exceptions to the Report and Recommendations of the Master. While it is the sole province of the trial court to settle economic issues, we give the Report and Recommendation of the Master full consideration particularly regarding the credibility of witnesses. Goodman v. Goodman, 375 Pa.Super. 504, 507, 544 A.2d 1033, 1035 (1988). We have reviewed the Report and Recommendation of the Master and the record. Our analysis of the thirty-nine (39) exceptions filed by Wife follows.

A. Wife's Exceptions

Pursuant to Pa.R.C.P. 1920.55-2(b), each exception shall set forth a separate objection precisely and without discussion. In complete disregard of this rule, Wife has filed multiple objections within each of her exceptions. Moreover, many of the exceptions are duplicative and are not supported with legal citations in her brief. For the sake of clarity, we shall address Wife's complaints by issue rather than as numbered in her brief. [3]

1. Character of the Marriage During 1996

Wife asserts the Master erred in failing to find that during the third quarter of 1996 Wife locked herself in the parties' bedroom out of fear of Husband when he drank heavily. Wife asserts such a finding is relevant to the extensive and long-term marital

misconduct of Husband. Husband acknowledged drinking during the marriage, however never to the degree that Wife asserted. The Master questioned the Wife's credibility. We shall defer to the Master on the credibility finding. Id. Exception number one is denied.

2. Wife's Answer to Husband's Petition for Counsel Fees

On October 13, 1999, Wife filed an answer to Husband's petition for counsel fees. Husband's petition was not filed until two days later on October 15, 1999. Wife objects to the following statement contained in the Master's report: "How she knew two days before the fee petition was filed is beyond this master." (Par. 7, pg. 2). Wife argues said finding was "highly prejudicial" and was an abuse of discretion. The certificate of service attached to Husband's petition for counsel fees indicates that Wife was served a copy of the petition on September 29, 1999. Although we find support in the record that Wife was served on September 29, 1999, we also find that Wife was not prejudiced by the Master's statement, therefore exception number two is denied.[1] [4]

3. Husband's Affidavit

Wife asserts the Master erred in finding that Husband's Affidavit pursuant to Section 3301(d) of the Divorce Code was "proper" and that it was error to use it as a basis for divorcing the parties. Husband's affidavit reads, "The parties to this action separated in October 1996 and have continued to live separate and apart for a period of at least two years." (Affidavit Under Section 3301(d) of the Divorce Code, filed 3/3/99). Initially, we note, the Master did not make a finding that Husband's affidavit was "proper" as Wife contends, nor is she bound to do so. Rather, the Divorce Code permits a court to grant a divorce pursuant to §3301(d) as follows:

> where a complaint has been filed alleging that the marriage is irretrievably broken and an affidavit has been filed alleging that the parties have lived separate and apart for a

---

1. Wife's third exception raises a clerical error contained in the Master's report and does not require a ruling.

period of at least two years and that the marriage is irretrievably broken and the defendant either:

(i) Does not deny the allegations set forth in the affidavit.

(ii) Denies one or more of the allegations set forth in the affidavit but, after notice and hearing, the court determines that the parties have lived separate and apart for a period of at least two years and that the marriage is irretrievably broken.

23 Pa.C.S.A. §3301(d) (emphasis added). The Master found the date of separation to be May 21, 1998 (approximately two years and seven months before the hearing), and that the parties lived separate and apart since that date. Accordingly, having found the parties had lived separate and apart for over two years and that the marriage was irretrievably broken, it is proper for the court to grant a divorce. This assertion of error is without merit. Accordingly, exceptions numbers four, thirty-eight, and thirty-nine are denied. [5]

4. Husband's College Tuition Expenses

Wife asserts the Master erred in finding that Husband's education expenses were paid by his employer. Husband testified that Sperry Corporation paid for his law degree, which he finished shortly after the marriage, was also paid by a tuition reimbursement plan. (N.T. at 24-25). Wife presented no evidence to rebut Husband's testimony. Wife testified extensively regarding how she helped Husband with his education endeavors, (N.T. at 112-116), either by drafting letters for his admission or urging him to complete his thesis. In light of her testimony it is noteworthy that she did not testify that marital funds were used to pay for his education. "The finder of fact is entitled to weigh the evidence presented and assess its credibility. The fact finder is free to believe all, part or none of the evidence..." MacAleer v. MacAleer, 725 A.2d 829, 832 (Pa. Super. 1999). We find support in the record for the Master's finding, therefore exception number five is denied.

5. The Parties' Work History

Wife asserts the Master made several errors concerning the work history of the parties. Although not clearly stated, we believe Wife is challenging the Master's credibility determinations in each

allegation. Initially Wife contends the Master erred in finding that Wife stopped working outside the home after the birth of the parties' second child. This exception is clearly misplaces, as the Master never made such a finding. The Master found that although Wife testified that she worked part-time after the birth of the parties' second child, it is not clear when Wife did these jobs or for how long. [6] (Report of the Master, pg. 13, fn. 12). Wife testified that after the birth of the children, she worked in telemarketing and newspaper delivery. (N.T. at 243-245). Husband testified that Wife worked in a part-time capacity from approximately 1970 through approximately 1980 when she began her career in real estate. (N.T. at 29-30). We find support for Wife's assertion that she worked a series of part-time jobs after the birth of her children.

Wife asserts the Master erred in finding that Wife presented testimony that Husband lost many jobs throughout the marriage. Wife testified rather inconsistently during the hearing, at one point stating, "finally when he was about to lose his job at Scott Paper..." (N.T. at 115). In Subsequent testimony Wife did acknowledge that Husband was never unemployed during the marriage. (N.T. at 122). We find support in the record that Husband was employed throughout the marriage.

Wife asserts the Master erred in finding that Husband was employed as a "Manager, when in fact he was employed as an Assistant Manager." (Defendant's Exceptions, pg. 2, par. 6). Husband testified "I worked for ten years as a risk manager-insurance manager..." (N.T. at 28). We find support in the record for the Master's findings concerning Husband's employment history.

Wife asserts the Master erred in finding Husband's statement that he lost his job due to the bankruptcy of ICF Kaiser to be credible in light of a footnote in the Master's Report concerning his credibility. The Master is free to believe part of the evidence. Id. at 832. There is additional support in the record concerning Husband's job loss at ICF Kaiser. On November 28, 2000 in the support opinion of the Honorable Senior Judge [7] Alexander Endy, the court found that Husband did not leave his job o his own volition, rather he lost the position due to the company's bankruptcy.

Wife asserts the Master should have given greater weight to Husband's specific denial of income from a consulting position. The evidence revealed that Husband was employed by Harris Semi Conductor as a consultant during 1999 and that he did not report the income he earned from this position to the court for support purposes. At this hearing, Husband did not deny earning income from Harris Semi Conductor, rather he did not recall his hourly billing rate. (N.T. at 73). The Master noted Husband's failure to report the income to the court and the effect that failure had on his credibility. Accordingly we find the Master did consider this information when making her credibility findings and we defer to the Master. Goodman at 1033. Although we find some support in the record for two of Wife's assertions of error we do not find the assertions affect the overall outcome of the recommendation. Wife's exception number six is denied.

6. Husband's Insurance Allowance

Wife asserts the Master erred in failing to find that he receives approximately $260.00 per month from his employer in lieu of health insurance coverage. This assertion of error is also misplaced as the Master found, "He also receives his medical insurance "payment" since he has insurance through PBA". (Report of the Master, pg. 5, par. 9). Exception number seven is denied. [8]

7. Wife's Exhibit D-6

Wife asserts the Master erred in finding her expenses exhibit (D-6) not credible. Although Wife submitted the exhibit as a current budget documenting her expenses, she testified that several items required further updating. Wife insisted the expense for "Home & Property Insurance" should be adjusted upward by approximately $132.00 annually. (N.T. at 147). She testified the figure for school taxes should be increased by $400.00-500.00 annually. (N.T. at 147). Some of Wife's other listed expenses included: a home equity loan with a total monthly payment of $1,867.00; annual telephone expenses of $200 per month ($2,400 per year); annual car maintenance of $2,000; and annual recreation and fitness expenses of $1,900. (Exhibit D-6). On cross-examination, however, Wife admitted that $422.00 of the home equity loan was actually a car loan that had been consolidated.

(N.T. at 265). Exhibit P-11, Wife's 1999 Federal Tax return, reveals that Wife claimed $1,732 for telephone service and $3,842 in car and truck expenses as business expenses prior to calculating her reportable taxable income. Although Wife testified that the car and truck expenses were in addition to the $2,000 that was included in her expense exhibit, (D-6), she conceded that the telephone expenses were the same as those listed on the expense exhibit. (N.T. at 270). Wife acknowledged that she did not pay $1,900 for recreation and fitness expenses in 2000, and she estimated that she had probably actually spent $950.00. (N.T. at 274). She estimated that her actual dental expenses were approximately half of the $1,100 figure listed on her exhibit. (N.T. at 275). Wife's testimony under cross-examination revealed that her expense statement was not a [9] credible document, and it was proper for the Master to find the document lacking. Having found ample support in the record for the Master's findings we dismiss Wife's exception number eight.

8. ICF Kaiser International, Inc. 401(k) Plan Loan

Wife asserts the Master erred in finding that a loan taken out during the course of the marriage from Husband's 401(k) plan with ICF Kaiser International, Inc., [Kaiser] was a marital debt. Husband testified that the loan was probably taken out to pay college tuition and that payments were deducted from his salary for the last year or two he worked for Kaiser. (N.T. at 76-77). In her brief, Wife asserts this money was borrowed illegally by Husband. The assertion is outside the record. Wife did testify that Husband "got $5,000 off of the pension", (N.T. at 221), however there is no testimony regarding her allegations of illegal borrowing. We find support in the record for the Master's finding that this was a marital debt, therefore exception number nine is denied.

9. Value of Certificates of Deposit

Wife asserts the Master erred in calculating the total value of the Certificates of Deposit to be $50,184 and asserts the actual

total value of the Certificates of Deposit to be $46,280.39.[2] Without any support in the law, Wife also asserts these Certificates were not marital property. Aside from eight enumerated circumstances, which do not [10] apply to this property, "marital property means all property acquired by either party during the marriage." 23 Pa.C.S.A. §3501. We specifically find that all five Certificates were opened during the marriage with marital funds. At oral argument Husband agreed with Wife's calculation, therefore exception number ten is sustained only as to the value of the Certificates, and is denied as to Wife's assertion they were not marital property.

10. Value of Automobiles

Wife asserts the Master erred in finding that the 1987 Saab was worth $3,350.00 and that the 1996 Saab was worth $12,861 ($20,390 blue book value - 7,529.00 loan balance). Wife asserts the vehicles should be valued at $2,825.00 and $7,556.00 (15,085.00 value - 7,529.00 loan balance) respectively, and in support she presented Exhibit D-11. The Master found the exhibit to be incomplete and illegible. Husband also presented evidence as to the valuation of the vehicles, which the Master accepted. The Divorce Code does not contain a specific method for valuing assets, therefore the trial court must exercise its discretion and rely on the estimates, inventories, records of purchase prices, and appraisals submitted by the parties. Smith v. Smith, 653 A.2d 1259 (Pa. Super. 1995). The court is free to accept all, none, or portions of the testimony regarding the true and correct value of property. Aletto v. Aletto, 537 A.2d 1383 (Pa. Super. 1988). We agree with the Master that Wife's evidence is of no value. The document is basically illegible and does not contain any identifying information.

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2. This marital property consists of five Certificates of Deposit, as follows:

CD#24032824 (opened 7/26/95-closed 3/19/99)	$ 5,302
CD#24033111 (opened 8/9/95-closed 2/23/99)	$10,794
CD#24044253 (opened 8/26/97-closed 3/19/99)	$ 6,527
CD#24044342 (opened 9/3/97-closed 3/3/99)	$ 7,530
CD#24042935 (opened 8/28/96-closed 3/9/99)	$16,127
Total Value	$48,280

Exception number eleven is denied. [11]

11. The master's Assessment of Wife's Conduct

Wife asserts the Master erred in concluding that wife used her *pro se* status as a excuse or her failure to produce documents and that she was contemptuous at the hearing. Wife denied ever being asked to produce account statements for the Certificates of Deposit, and after being confronted with pleadings seeking those statements, she elaborated, "I don't recall seeing that part of... that statement. I was handling this pro se. I did the best I could with everything that came to me." (N.T. at 234, 252-254). Accordingly we find support in the record for the Master's assessment of Wife's behavior during the discovery aspects of this litigation.[3] As to Wife's behavior during the equitable distribution hearing, the record is replete with admonitions by the Master to Wife to restrict her answers to questions posed. (N.T. at 116, 117-118, 133, 136, 239-240, 250, 257-258). Exception number twelve is without merit and is dismissed.

12. Marital Debts and Credits

Wife asserts the Master erred in finding the Kaiser (401k) Plan Loan was a marital debt, that the IRS debt was marital and Wife should have received a credit for payments. The Kaiser 401(k) Plan Loan exception has been addressed above in paragraph eight, and has been dismissed. As to the IRS debt and any credit to Wife, the evidence at the hearing established that throughout the marriage the parties filed their federal income tax returns jointly. (N.T. at 244). Wife was self-employed as a [12] realtor, and at no time during her twenty years in that career, did she ever pay quarterly estimated taxes. (N.T. at 245). Throughout the marriage, Husband was a W-2 wage earner. The parties were audited by the

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3. Clearly, Wife set about in a course of conduct during this litigation designed to thwart discovery, as demonstrated by the following Orders entered: (1) On March 11, 1999 the Honorable Judge Katherine B. Platt entered an Order directing Wife to produce the requested documents and to answer interrogatories; and (2) On October 5, 1999 the undersigned entered an Order directing Wife to produce documents and to answer all interrogatories left blank within ten days.

IRS during the mid-1980's for several tax years.[4] And Wife testified that the taxes plus interest and penalties totaled over $130,000. The parties took out a home equity loan for $75,000 and made the remaining payments monthly. (N.T. at 126-134). All the payments to the IRS were made during the course of the marriage. (Exhibit D-4). By the time of the equitable distribution hearing, the balance of the home equity loan was $36,028, (N.T. at 15), and it included other debts besides the IRS payoff. (Exhibit D-5). Both Husband and Wife testified that they used Wife's commissions to live on and that they never paid estimated taxes on her income quarterly. Although each party blames the other for the tax debt, it is clear they used marital funds to pay the debt. We find ample evidence in the record to support the Master's finding that this was marital debt and that Wife is not entitled to a credit for payments made during the marriage. Exception number thirteen is dismissed.

Wife has filed a separate exception alleging the Master erred in finding that Wife is to blame for the tax liens. The Master did not make such a finding. The Master found, and the evidence supported, that both Husband and Wife were responsible for the tax liens. They pooled their income and lived off of the income knowing that taxes would have to be paid. Later during the marriage, and with both parties income, the taxes were paid. Accordingly exception number twenty is denied.

Wife asserts the Master erred in finding that Wife received the 1997 refund of $986.00. Husband testified that the refund was earned during the marriage and [13] received after separation, but that he did not receive any of it. (N.T. at 42). We find support in the record for the Master's finding, therefore this exception is dismissed.[5]

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4. Wife was not completely clear which years were the subject of the tax audit, "I believe it's '84, '85, '86, '87, '88, '89 or could have been '85, '86, '87 -- I don't [sic] about 84 -- I think 84 was in it." (N.T. at 125).

5. Wife included this issue with exception number ten concerning the value of the certificates of deposit. For the sake of clarity, we have addressed this issue in this section.

13. Equitable Distribution and Divorce Decree

Wife asserts the Final Decree should follow the Equitable Distribution Order. The Divorce Code provides:

> A decree granting a divorce or an annulment shall include, after a full hearing, where these matter are raised in any pleadings, an order determining and disposing of existing property rights and interests between the parties, custody, partial custody and visitation rights, child support, alimony, reasonable attorney fees, costs and expenses and any other related matters, including the enforcement of agreements voluntarily entered into between the parties.

23 Pa.C.S.A. §3323(b) (emphasis added). Accordingly it is proper for this court to enter the final decree and equitable distribution simultaneously. Exception number fourteen is dismissed.

14. Equitable Distribution Award[6]

In Wife's 22nd exception[7] she argues the Master erred in awarding Wife 58% of the marital estate and 42% of the marital estate to Husband. In reviewing a challenge to equitable distribution, "[t]he trial courts have broad equitable powers to effectuate justice in these matters and are to analyze and apply the factors set forth in 23 [14] Pa.C.S.A. §3502."[8] Gill v. Gill, 450

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6. In exceptions numbered 15-20, Wife has filed separate exceptions alleging errors as to several of the equitable distribution factors, culminating in a separate exception, number 22, as to the final percentage recommended. We shall analyze each of the factors enumerated in section 3502 and where Wife has filed an exception to a specific factor we shall rule on that specific exception.

7. Wife has also raised the issue of the time share being awarded to Husband. That issue is addressed in paragraph fifteen.

8. The factors set forth in 23 Pa.C.S.A. §3502(a) are as follows:
(1) The length of the marriage.
(2) Any prior marriage of either party.
(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of the parties.
(4) The contribution by one party to the education, training or increased earning power of the other party.
(5) The opportunity of each party for future acquisitions of capital assets and

Pa.Super. 611, 615, 677 A.2d 1214, 1216 (1996) (quotation omitted). The factors set forth in the Divorce Code do not mandate any prescribed value to assign to the factors which apply in a given case; however, an analysis of the various factors in light of the facts found by the Master which are supported by evidence is critical when determining whether the recommended distribution is appropriate. To that end, we shall review each of the factors:

1) Length of the marriage - the parties were married for twenty-nine (29) years and seven (7) months prior to separation. Wife raises a separate exception to this factor arguing the Master erred in finding this category is neutral for purposes of equitable distribution. Wife contends that Husband squandered assets and created extensive liabilities by drinking, gambling, and womanizing throughout the parties' marriage and that this factor should have been weighted to Wife's benefit. Husband had an extra-marital affair with Brenda Connell that began during 1989 and ended during 1991.[9] Husband did spend some marital funds on Ms. Connell, however there [15] was no evidence regarding how much was spent. The evidence also reveals that between 1988 and 1990, wife became aware of the relationship. (N.T. at 116-117). As to the alcohol assertions, Husband denied excessive drinking stating, "If I drank, I drank in the afternoon, evening period exclusively.

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income.

(6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as a homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party, including Federal, State and local tax ramifications, at the time the division of property is to become effective.

(11) Whether the party will be serving as the custodian of any dependent minor children.

9. Husband and Ms. Connell did have occasional telephone contact after their affair ended. (N.T. 175 and 198).

That was it. It was not that regular." (N.T. at 60). Brenda Connell, whom Wife called as a witness, testified on direct examination that she was not aware of Howard Prol having a problem with alcohol. (N.T. at 204). Husband admitted that he did gamble on football games or NCAA finals and that he never gambled more than $1,000 or close to it per year. (N.T. at 77). Although Wife testified that Husband's alleged alcohol consumption was at a dangerous level and that he had incurred extensive debts, there was absolutely no corroborating evidence to support her charges.[10] The Hearing Office found Wife's credibility to be "shaky". (Report of the Master, pg 10, par. 1). We defer to the Master on issues of credibility. "The finder of fact is entitled to weigh the evidence presented and assess its credibility." Miller v. Miller, 744 A.2d 778, 787 (Pa. Super. 1999). We agree with the Master that the length of this marriage is neutral for purposes of equitable distribution, therefore Wife's exception number fifteen is denied.

2) Prior marriage of either party - This was the first marriage of both of the parties. The category is neutral for purposes of equitable distribution.

3) Age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties - Wife was 61 years old and Husband was 59 years old at the time of the hearing. Wife had a hysterectomy in 1985 and was treated for breast cancer during 1987. She also testified to having had a [16] bunionectomy and arthroscopic surgery in her right knee.[11] Husband has atrial fibrillation and has been cardiac overted two times. He is currently on medication which has enabled him to lead a normal life. (N.T. at 33-34). The Master found it did not appear that these health issues impacted either party.

Wife is employed as a licensed realtor and broker, where she earns $1,777 net per month. Wife did not present evidence of

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[10] This allegation was also made in Wife's exception number one.

[11] Wife testified to having suffered a "tear" in left knee, however it is not clear from the record whether she had arthroscopic surgery. (N.T. at 226-227).

the costs of health insurance.

Husband is currently employed for Waddell Corporation where he earns $112,000 per year, with the opportunity to earn an $8,000 bonus. He receives approximately $260.00 per month from his employer in lieu o health insurance coverage, which he continues to have with the Pennsylvania Bar Association.

There was no testimony be either party regarding a separate estate.

As set forth in paragraph seven, Wife's expense exhibit was deemed unreliable, therefore her expenses are not of record. Husband did not present evidence of his expenses.

The Master found this category weighed in Wife's favor, and we find support for that finding.

Wife has filed a separate exception to this fact alleging the Master erred in finding she was not employed when the parties' children were young. This exception was addressed in paragraph five and has been denied. Wife also argues her expense exhibit should be found credible. The exception was addressed in paragraph seven and has been denied. Accordingly exception sixteen is denied. [17]

4) Contribution by one party to the education, training or increased earning power of the other party - Husband completed his undergraduate degree shortly after the parties' marriage. He received an MBA and JD during the marriage while working full-time with his employers paying the tuitions. Husband was often unavailable to the family either due to his employment/school schedule or later due to employment travel.

Wife had completed some college course work when the parties married. She took real estate courses during the marriage and continues to be a licensed real estate agent. Wife was primarily responsible for the home and children while Husband pursued his employment and schooling.

Wife has filed a separate exception alleging the Master erred in finding that Wife testified that she would not move to Philadelphia. Wife testified, "He didn't ask me whether I cared. I did care. I wanted to stay after we built the house. I had no choice. I had to." (N.T. at 113-114). West find support for Wife's

assertion that she did not refuse to move, therefore exception seventeen is sustained.

We agree with the Master that this category weighs in favor of Wife for purposes of equitable distribution.

5) Opportunity of each party for future acquisitions of capital assets and income - Husband and Wife are both currently employed at their earning capacities. Although he is not currently participating, Husband could contribute funds to a retirement account with his employer. Husband's income will permit him to acquire capital assets.

This category is weighed in Wife's favor.

6) Sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits - This category is addressed above. [18]

7) Contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker - Husband was the primary wage earner throughout the marriage. Wife contributed both by caring for the house and children and through her employment.

Husband did dissipate some marital assets during the course of his extra-marital affair, however, there was no evidence regarding the amount.

The category weighs slightly in favor of Wife for purposes of equitable distribution purposes.

Wife has filed a separate exception alleging the Master erred in weighing this factor "slightly in favor of Wife" in light if Husband's "gambling, drinking, and womanizing" during the marriage. Wife asserts she alone paid off debts that Husband incurred through these activities and she refers to the loan consolidation application in support. (Exhibit D-5) A review of the exhibit reveals that Husband and Wife disclosed three credit card accounts on the application. Each account has been checked off as a joint account. Moreover, Wife testified that the parties' had credit cards during the marriage. (N.T. at 138). Until Wife filed a complaint for support in May 1998, Husband's salary was deposited into a joint account which was in turn used to pay joint

expenses. (N.T. at 23). There is no evidence to support Wife's claim that she paid off the debt without Husband's financial help. Nor is there evidence that it was Husband alone who incurred the debt. Exception number eighteen is denied.

8) Value of the property set apart to each party - Wife has continued to reside in the marital residence and she was in possession of the marital furnishings. [19]

Wife filed a separate exception to the Master's finding that this category weighs in favor of Husband in light of the Master's finding that Husband's valuation of the marital property was not credible. Whether the Master believed Husband's valuation or not is irrelevant. During the separation, Wife was in possession of the marital property and Husband was not and for that reason alone this factor weighs in Husband's favor. Exception number nineteen is denied.

9) Standard of living the parties established during the marriage - The parties were able to live comfortably during the marriage. They had a nice home and they took many vacations together as a family. The children went to private school and both children went to college.

This category is neutral for purposes of equitable distribution.

10) Economic circumstances of each party, including Federal, State and local tax ramification, at the time the division of property is to become effective - The economic circumstances of the parties are set forth above. Under the recommended distribution of assets there is no current tax impact. This factor does not weigh in favor of either party.

11) Dependent children - Neither party will be serving as the custodian of any dependent minor children. This category is neutral for purposes of equitable distribution.

After considering the factors, we find that factors one, two, nine, ten, and eleven are neutral. Factors three, four, five, six, and seven weigh in Wife's favor, and factor eight weighs in Husband's favor. Thus we find the distribution of 58% percent of the marital property to Wife and 42% to Husband as recommended by the Special Master is [20] reasonable, and we adopt her

recommendation. The exception to the recommended equitable distribution award contained in number 22 is denied.

15. Valuation of the Marital Home

Wife alleges the Master erred in valuing the house, the Certificates of Deposit, and the Saab automobiles. The Certificates of Deposit were addressed in paragraph nine. The value of the Saab automobiles were addressed in paragraph ten. The only new issue in this exception is the value of the house. The parties stipulated to the value of the house ($200,000) and the balance on the home equity loan ($36,028). The Master has assigned the house a value of $163,972 ($200,000 - $36,028). Wife again raises the tax debt asserting that she should receive a credit for the payments she has made to the IRS ad on the home equity loan. As stated above, these were joint debts that were paid with joint income. Additionally, Wife has been in possession of the marital residence during the separation, therefore she was responsible for the mortgage payments. Exception number twenty-one is denied.

16. The Time Share

Wife asserts the Master erred in awarding the time share property to Husband because she alone paid for the property. Unfortunately, this claim is indistinguishable from all of Wife's claims regarding her paying every expense.[12] Having found support for the Master's equitable distribution award, we will not disturb the recommendation. [21] The exception to the award of the time-share contained in exception number twenty-two is dismissed.

17. Personal Property

Wife asserts the Master erred in finding that the parties should divide the personal property by picking one item at a time because she purchased these items with her own income throughout the marriage. This exception like the previous one must fail. As set forth the parties combined their income and paid expenses. Exception number twenty-three is denied.

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[12] Again and agin Wife asserts she alone paid expenses, and that Husband failed to contribute income to the marital household. As set forth, Husband's salary was deposited into a joint account and was utilized to pay expenses as well.

18. Alimony Factors

Wife asserts the Master erred in her analysis of the Alimony factors by referring to the previous section of the Master's report for a discussion of factors one through eight. As the factors were fully discussed in the previous section of the Master's Report, there is no error.[13] Accordingly Wife's exceptions numbers twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one are denied.

19. Relative assets and Liabilities of the Parties (Alimony Consideration)

Wife asserts the Master erred in finding the only liabilities that Wife has are the mortgage, the car loan and debt to counsel. Wife asserts she has incurred the tax liability and the 401(k) loan debt. We have addressed the tax liability in paragraph eleven. We have addressed the 401(k) loan in paragraph eight. We do not that Wife's [22] car loan was included in the loan consolidation and is no longer a separate debt. Exception number thirty-two is denied.

20. Relative Needs of the Parties (Alimony Consideration)

Wife asserts the Master erred in finding that she did not present credible evidence as to her exceptions. The exception was addressed in paragraph seven, accordingly exception number thirty-three is denied.

21. Marital Misconduct (Alimony Consideration)

Wife asserts the Master erred in finding that both parties behaved badly during the marriage, and argues that the proper finding would have been that Husband alone misbehaved. Husband was often unavailable to the family either due to his work or schooling schedule. It appears that after Wife was diagnosed with breast cancer that she withdrew from the marriage. Husband also alleged that Wife tempered with his heart medication. It is clear from the testimony of both Husband and Wife that this was a volatile relationship. Wife has supported this exception merely by referring to the record where she testified about Husband's drinking

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13. Repeatedly Wife has filed exception to the Report of the Master even when the Master finds in her favor.

and his affair. The Master observed both parties testify and we defer to the Master on matters of credibility. Miller at 778. Exception number thirty-four is denied. [23]

22. Alimony Award

Wife asserts the Master erred in awarding alimony for a period of six years and argues the award should have been for ten years or for life and that the Master failed to provide a separate analysis as required by Section 3701(17)(d) [sic]. We find the Master's recommendation to be appropriate. Currently Husband has a greater earning capacity than Wife, however, this will not be the case when Husband retires. The alimony award as recommended permits Husband to have the alimony obligation reviewed when he is 62 years old. This is necessary because Husband's current employment is connected to his employer's contracts with various municipalities and governments that could result in his termination at the conclusion of those contracts. (N.T. at 25-26). Although modifiable, Husband will have an alimony obligation to Wife until he is 65 years old, retirement age, at which time the income disparity between the parties will be lessened.

Wife's other assertion of error that the Master failed to provide an explanation of how she reached the alimony award. Section 3701(d)[14] reads:

> Statement of reasons.--In an order made under this section, the court shall set forth the reason for its denial or award of alimony and the amount thereof.

We find the master did set forth the reasons for the award of alimony and the amount of alimony to be awarded. Exception number thirty-five is dismissed. [24]

23. Alimony Pendente Lite (APL)

Wife asserts the Master erred in recommending no APL award. Wife has been receiving spousal support through Domestic Relations. Wife did not pursue this claim before the Master, therefore it is waived. Exception number thirty-six is denied.

24. Counsel Fees

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[14] Wife cited §3701(17)(d) in support for her assertion of error, That is not a proper cite and it is believed that wife is referring to 3701(d) in support.

Wife asserts the Master erred in awarding counsel fees to Husband in the amount of $1,000.00. "An award of counsel fees is not intended to reimburse one party in full for his or her legal costs. Rather, the amount awarded should be sufficient so as to advance just results and to place the litigants on equal footing." Williamson v. Williamson, 586 A.2d 967, 974 (Pa. Super. 1991). Wife is receiving the greater percentage of the estate, and although Husband earns more than Wife, he has incurred more attorney's fees, due in part to Wife's conduct during the litigation. We find support in the record for this recommendation, therefore exception number thirty-seven is denied.

Aside from the sustained exceptions of the parties, we adopt the calculations of the Master and the recommendations contained in the Master's Report.

Accordingly, we enter the attached Final Decree.

9/18/01 /S/

DATE JAMES P. MacELREE II J.

[25]

HOWARD K. PROL : COURT OF COMMON PLEAS
Plaintiff : CHESTER COUNTY, PENNSYLVANIA
v. : IN DIVORCE
LUCILLE PROL :
Defendant : NO. 98-04293

FINAL DECREE

AND NOW, this 18th day of September 2001, this action having been heard by the Master in divorce and reviewed by this Court, and on the evidence presented, it is hereby ORDERED and DECREED that:

I. DIVORCE

The Plaintiff, Howard K. Prol (Husband) and Defendant, Lucille Prol (Wife) are divorced from the bonds of matrimony. All duties, rights and claims accorded to either of the said parties at anytime heretofore in pursuance of said marriage, shall cease and the parties shall, severally, be at liberty to marry again as if they had never been married.

II. ANCILLARY MATTERS

It is hereby ORDERED and DECREED that Wife's

Exceptions to the Master's Recommendation Nos. 1 through 9, 11 through 16, and 18 through 39 are OVERRULED and DISMISSED. Exception number 10 is SUSTAINED in PART and [26] OVERRULED in PART as set forth in our opinion. Exception number 17 is SUSTAINED.

III. EQUITABLE DISTRIBUTION

The marital estate consists of the following:

Asset	Value
Marital Residence	$163,972
Marriott Time Share	6,000
Husband's 401(k), Raytheon	33,055
Husband's 401(k), ICF Kaiser	122,188
Five Certificates of Deposit	46,280
Wife's First Fidelity Checking Account	1,500
Wife's First Financial Savings Account	869
Wife's Keystone Credit Union, Savings	280
Wife's Keystone Credit Union, Checking	175
1997 Tax Refund	986
Husband's ICF Kaiser Retirement	48,353
Wife's Oppenheimer Account	64,140
Husband's Toyota Camry	7,800
Wife's 1987 Saab	3,350
Wife's 1996 Saab	12,861
Total Marital Assets	$511,809

Wife shall receive 58% of the marital assets, or $296,849.22 and Husband shall receive 42% of the marital assets, or $214,959.78. Husband will be responsible for the remaining $1,584 debt on his 401(k). Wife will owe him 50% of that debt or $792. That shall be deducted from her equitable distribution thereby reducing her distribution to $296,057.22 and increasing Husband's to $215,751.78. The distribution will be as follows: [27]

Wife has received or shall receive the following marital assets:

Marital Residence	$163,972
Five Certificates of Deposit	46,280
Wife's First Fidelity Checking Account	1,500
Wife's First Financial Savings Account	869

Wife's Keystone Credit Union, Savings	280
Wife's Keystone Credit Union, Checking	175
1997 Tax Refund	986
Wife's Oppenheimer Account	64,140
Wife's 1987 Saab	3,350
Wife's 1996 Saab	12,861
Total received by Wife	$294,413

Husband has received or shall receive the following marital assets:

Marriott Time Share	$6,000
Husband's 401(k), Raytheon	33,055
Husband's 401(k), ICF Kaiser	122,188
Husband's ICF Kaiser Retirement	48,353
Husband's Toyota Camry	7,800
Total received by Husband	$217,396

As can be seen from the above distribution, Husband owes to Wife the sum of $1,644.22. That sum is due to Wife 30 days after entry of the decree in divorce. Husband shall also pay Wife the sum of $1,162, one-half of the timeshare taxes and maintenance fees for the last three years, within 30 days of the entry of the decree in divorce.

Husband has a retirement plan with Scott Paper. Wife is entitled to 58% of the pension; counsel for Wife shall prepare the Qualified Domestic Relations Order.

The personal property is not distributed above. As stated earlier, Husband's value is not believed. Wife tried to testify to a value, was denied that, but spoke the value into the record anyway. That value was stricken. The personal property shall be [28] divided with each party, starting with Wife, choosing a piece and going back and forth until it is all distributed. This shall be done in the presence of a constable, with both parties sharing the costs equally and up front to the constable. Failure by either party in paying the constable will be considered a violation of this order. Failure to cooperate in the task shall also result in a per se violation of this order.

IV. ALIMONY

Wife is to receive the sum of $1,300 per month from the

date of the entry of the decree in divorce until Husband turns 62 years of age. At that time, Husband is permitted to file to have the incomes reviewed and the amount modified if appropriate. However, Husband shall be obligated to pay Wife until he reaches the age of 65.

V. ALIMONY PENDENTE LITE

This claim is denied and dismissed.

VI. COUNSEL FEES AND EXPENSES

Wife shall pay to Husband's counsel the sum of $1,000 in counsel fees. That payment shall be made within 30 days of the entry of the decree in divorce.

VII. MEDICAL INSURANCE

Husband is to provide to Wife all the documentation available to him from his health insurance in reference to COBRA coverage for Wife within 10 days of his receipt thereof. Husband shall not remove Wife from his medical insurance until after the [29] issuance of a decree in divorce, at that time, Wife shall become responsible for her health insurance and unreimbursed expenses.

BY THE COURT

/S/

JAMES P. MacELREE II J.

[30]

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

HOWARD K. PROL	:	No. 429 MAL 2002
Respondent	:	Petition for Allowance of Appeal
v.	:	from Order of the Superior Court
LUCILLE PROL	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 26th day of December, 2002, the Petition for Allowance of Appeal is denied. The Application for Stay of Marital Assets is dismissed as moot.

TRUE & CORRECT COPY
ATTEST DEC 26 2002
/S/
SHIRLEY BAILEY
CHIEF CLERK

HOWARD K. PROL	:	IN THE COURT OF COMMON PLEAS
Plaintiff		CHESTER COUNTY, PENNSYLVANIA
vs.	:	No. 98-04293
LUCILLE PROL	:	
Defendant	:	IN DIVORCE

REPORT AND RECOMMENDATION OF THE MASTER

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

* * *

After a preliminary conference and a settlement conference, held by Master Streitel, a hearing, attended by both parties and their attorneys, was held December 7 and 8, 2000.

I. FINDINGS OF FACT

[1]

* * *

D. OTHER ISSUES

2.[10]

* * *

Wife is requesting credit for payment made on joint taxes in the late 1980's continuing present day, through the payment of the mortgage. Those debts were clearly marital and she paid them, during the marriage. Husband testified that Wife would not help with the preparation of the tax returns by providing her receipts. Husband stated, credibly, that the money came in and went out for household expenses and private school, as well as college tuition for their children. The parties were still together when the IRS debt was incurred and repaid. Wife did take a loan out to pay the IRS, using the house as collateral. Husband signed that loan, making both parties obligated. The house value, when considering values for distribution, will reflect the debt. [11]

* * *

II. DISCUSSION AND RECOMMENDATION

B. RELATED CLAIMS

1. DIVISION OR PROPERTY

...As for the tax liens, Wife cannot place all the blame on Husband.

Yes, she said she relied upon him, but without receiving her financial information, he could not do the taxes. It was her income that required the payment of quarterly taxes. When the taxman comes for you, there is nowhere to hide. That is a joint responsibility. Wife cannot claim innocent and injured spouse. ... [17]